

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of J.H.)	
Petitioner)	
)	
And)	CAUSE NO. 101005-72
)	
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

On December 17, 2010, Petitioner, J.H. and her parents, filed a transfer request with the Indiana High School Athletic Association (IHSAA) and requested the IHSAA make an athletic eligibility determination for the 2010-2011 school year. On December 20, 2010, the Assistant Commissioner of the IHSAA determined Petitioner to be ineligible under rule 19-4.

On January 17, 2011, Petitioner sought review by the IHSAA Review Committee of the Assistant Commissioner's determination. The Review Committee conducted its hearing on January 20, 2011, and issued its decision on January 28, 2011. The decision upheld the Commissioner's determination that Petitioner was ineligible for 365 days from her enrollment at Boone Grove due to violations of Rule 20, Undue Influence, and Rule 19-4, Transfer Rule.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel¹ on January 31, 2011. On February 4, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee's decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the Panel. On February 15, 2011, the Panel held a meeting where a quorum of members was present.² In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

¹ The Case Review Panel (Panel) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The Panel, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

² Seven members were present at the meeting, including Mr. Matt Tusing (chairperson), Ms. Dana Cristee, Mr. Michael Golembeski, Mr. Keith Pempek, Mr. Matthew Rager, Mr. Marcus Robinson, and Mr. Earl Smith Jr.

FINDINGS OF FACT

1. Petitioner lives with her parents in the Town of Hebron, Indiana and within the Boone Grove school district.
2. Petitioner attended Hebron High School her freshman and sophomore years (2008-2009, 2009-2010) and part of her junior year (2010-2011) and played on the varsity track and field, varsity volleyball, and varsity basketball teams each year, including her junior year until the time at which her family moved. She last participated in athletics at Hebron on December 6, 2010.
3. Prior to the move, Petitioner and her family resided for 13 years in a home located on 800 West in the town of Hebron ("farm property"). The farm property was located on ten acres, included several out-buildings, had been in the family for 40 years, and was purchased by Petitioner's father through the estate after his father passed away.
4. Petitioner's father experienced multiple health problems preceding the move. The problems involved: chronic back issues for over 20 years; a right knee on which he received three surgeries for which his orthopedic surgeon recommended eventual full replacement during a Spring 2010 visit, and for which injections will be required every three months until replacement; and in 2008, he was diagnosed with cancer.
5. Petitioner discovered the cancer in 2008 after experiencing fatigue that prohibited him from maintaining the farm or doing regular yard work. He had an operation in July 2008 during which a tumor was removed from his small intestines. He spent four months convalescing. Since that time, Petitioner's father has remained in remission.
6. Petitioner's parents began discussing plans to sell the farm property following Petitioner's father's surgery in the summer of 2008 and decided to attempt maintaining the farm in 2009. Petitioner's parents revisited the topic of selling their home in the Fall of 2009, decided to begin the sale process in the spring, but began liquidating some of the farm equipment at that time.

7. Petitioner's father had historically planted up to an acre and one-half to two acres of sweet corn on the farm property. In 2008, no corn was grown. In 2009, Petitioner's father attempted return to the former amount of planting. In 2010, Petitioner's family decreased planting to a level that only supplied corn for the family's consumption.
8. In the fall of 2009, Petitioner began playing AAU basketball under Coach Doug Judy. Coach Judy is critical of High School Basketball generally and is known for his critical beliefs regarding High School Basketball as compared with AAU basketball's ability to lead players to play for college teams.
9. At some point before the home was formally placed for sale, Petitioner had conversations about the planned move with her coaches. Rumors had also begun to circulate about Petitioner moving.
10. Petitioners' parents placed the home "for sale by owner" in the spring of 2010. In May, after no success, they contacted Realtor, Nick Naumoff ("Naumoff"). During their initial meeting, Petitioner's father met with Naumoff and specified the grid region of interest and preference that prospective homes be situated on less than one acre of land.
11. The grid region that Petitioner's parents targeted for their real estate purchase included multiple school districts, including Boone Grove, Hebron, and Kouts school districts.
12. Petitioner's parents entered into a purchase agreement with prospective buyers for the farm property on August 30, 2010. The purchasers had indicated challenges in securing the mortgage, and Petitioner's parents were not confident that the sale would close.
13. Petitioner and her brother were enrolled in Hebron schools in August 2010 for the 2010-2011 academic year. At the time of enrollment, Petitioner's parents purchased season passes for the family for all sporting events at Hebron.
14. On November 2, 2010, Petitioner's parents entered into a purchase agreement for a home located on Allegheny Road in the Town of Hebron that is in the Boone Grove School

District for purchase (“Allegheny property”). Petitioner’s parents bought the property believing it to be a good investment based on its price compared to the price of other homes in the neighborhood.

15. In the weeks following the purchase agreements, information had continued to informally circulate about Petitioner’s family’s purchase of a home in Boone Grove School District.
16. Based on statements by their realtor that predicted their closing on the farm property on December 8, Petitioner’s mother met with the Hebron High School Principal Mr. Luetz. Mr. Luetz informed Petitioner’s mother that Petitioner and her brother may continue at Hebron despite the family’s move to Boone Grove School District.
17. Petitioner was not persuaded to let her daughter continue at Hebron following the move outside of the district primarily because of the longer driving time, 5 minutes versus 15 minutes, that would be required for her children and because of her belief that her children should just simply attend the school in the district in which they live.
18. Mr. Luetz directed Petitioner’s mother to Boone Grove to initiate the transfer process. Petitioner’s mother then went to Boone Grove. Petitioner’s mother met with the principal to begin the transfer process. The principal directed to her to the Boone Grove Athletic Director Doug Knutson’s office and there the athletic transfer process began.
19. Petitioner’s parents were informed by their Realtor that the closing date on the farm property had been postponed until later that month. On December 13, 2010, Petitioner and her brother began attending Boone Grove Schools. On December 28, 2010 Petitioner’s parents closed on the farm property.
20. When filling out the IHSA paperwork for athletic transfer, Hebron recommended against allowing eligibility for Petitioner and her brother due to violation of Rule 19-4. Hebron High School Representatives based their recommendation against Petitioner’s eligibility on the belief that Petitioner’s AAU coach Doug Judy recruited Petitioner to attend Boone Grove High School. Hebron’s belief about Petitioner’s parents’ motivation

was despite Petitioner mother's representations that the move was due to the decision to downsize due to Petitioner's father's health and to be closer to Petitioner's mother's parents.

21. Boone Grove recommended for full eligibility finding that Petitioner's family had made a bona fide change of residence that was not primarily motivated by athletic reasons.
22. IHSAA Assistant Commissioner Phil Gardner was assigned the Petitioner's transfer. Gardner ruled that Petitioner's brother receive full eligibility and that Petitioner be ineligible under Rule 19-4.
23. On January 20, 2010, in response to Petitioner's request for appeal, the IHSAA Executive Review Committee (Committee) held a due process hearing wherein both the IHSAA and Petitioner presented evidence and testimony in the matter.
24. On January 28, 2011, the IHSAA Executive Review Committee upheld the determination by Assistant Commissioner Phil Gardner based on the following six (6) conclusions of law:

1. *[Petitioner] transferred schools in December 2010, with a corresponding change of residence from the [farm property] to the Allegheny home. Under other circumstances, [Petitioner] might obtain full eligibility under rule 19-5. However, where there is evidence of undue influence, which is a violation of Rule 20, and when there is evidence that the transfer was motivated primarily by athletic reasons, which is a violation of rule 19-4, the student will be declared ineligible.*

Exercise of Undue Influence Rule 20-1

2. *The Review Committee concludes that comments by Coach Judy, whose step daughter played on the Boone Grove basketball team, about the relative merits of the Hebron basketball program versus the Boone Grove basketball program and about [Petitioner] having a better chance at a college scholarship, including Division I scholarships, if she played at Boone Grove, clearly encouraged and induced [Petitioner] and/or [Petitioner]'s parents to leave Hebron and to transfer to Boone Grove to play basketball, an athletic purpose.*

3. *The Review Committee notes that a violation of rule 20 may occur when there is an act which encourages or induces a prospective student to attend a school for athletic purposes, regardless of whether there is actually a resulting transfer. And[,] when there is a resulting transfer, as here, a violation of rule 20, as opposed to a violation of rule 19-4, does not require proof that the transfer was for primarily for [sic] athletic reasons.*
4. *The committee concludes that there is a violation of rule 20-1 as to [Petitioner].*
5. . . .

Eligibility under rule 17-8.5.

6. *The Review Committee concludes that the move by [Petitioner]’s family to the Allegheny home, and the enrollment by [Petitioner] at Boone Grove, were done in order for [Petitioner] to play basketball at Boone Grove, were both athletic in nature and were the primary reasons for the transfer. Accordingly, there is a violation of rule 19-4.*
 - a. *In determining if [Petitioner]’s transfer violated rule 19-4, the Review Committee considers the motive for moving and leaving the original residence and also considers the motive for moving to a particular new residence. And[,] since the school was not mandated here and [Petitioner] could have continued to attend Hebron even after the move, the Review Committee also considers the motive for withdrawing from Hebron and enrolling at Boone Grove. If the decision to move and leave the original residence, or the decision to move to a particular residence or the decision to withdraw from one school and enroll at another school, was athletically motivated, the transfer will be determined to be for athletic reasons. If it is then determined that these athletic reasons were the primary reason for the student’s transfer, there will be a loss of all athletic eligibility at the receiving school under rule 19-4.*
 - b. *With respect to the motive for moving and leaving the original residence, the Review Committee understands that [Petitioner]’s parents had apparently decided to essentially downsize to a more manageable residence, especially because of [Petitioner]’s father’s health and physical condition, and that there were discussions about the sale of the [farm property] in the fall of 2009. However, there was no indication that the family was going to sell the [farm property] until [Petitioner]’s father apparently put out a for-sale-by owner sign sometime in March 2010. The Review Committee notes that this was after there were already rumors that [Petitioner] was transferring to Boone Grove, this was after [Petitioner] told Coach Hale that she was*

leaving Hebron and going to Boone Grove and after she told Coach Gearhart the same thing, that is, she was leaving Hebron and going to Boone Grove. The series of events here suggest that the decision to go to Boone Grove preceded the actual marketing of the [farm property], which then suggests that the decision to go to Boone Grove was, itself, the reason for the move. However, since the Hoggs have provided a rational reason for the move and have stated that the actual decision to move preceded the statements about going to Boone Grove, the Review Committee does not find that her decision to sell the [farm property] and to move to a new residence,[sic] was primarily athletically motivated. But, while the Review Committee might not conclude that the move was just about athletics, it will still carefully scrutinize the choices this family made after having decided to move.

- c. *With respect to the motive for moving to a particular new residence, [Petitioner]’s parents made the unusual decision to move to the Allegheny home, which, coincidentally, is in the Boone Grove school district. Given the circumstances, this decision indicated a primarily athletic motive.*

...

- 24. Petitioner filed an appeal of the IHSAA Review Committee’s decision with the Case Review Panel on January 31, 2011.

CONCLUSIONS OF LAW

1. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
2. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are “state action” and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
3. The Case Review Panel (Panel) has jurisdiction in this matter. The Panel is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 et seq. The Case Review Panel has jurisdiction when a student’s parent refers the case to the panel not later than thirty (30) days after the date

of the IHSAA decision. I.C. 20-26-14-6(b). In this matter, the IHSAA rendered a final determination of student-eligibility adverse to the student on January 28, 2011. Petitioner sought timely review on January 31, 2011. The Panel may uphold, modify, or nullify the IHSAA Review Committee's decision. I.C. 20-26-14-6(c)(3).

4. The Case Review Panel is not required to review the IHSAA determination *de novo*. The Case Review Panel review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The Panel is required to hold a "meeting," I.C. 20-26-14-6(c)(2), not a hearing. The Panel is not required to collect testimony and information during the meeting, but may collect testimony and information prior to the meeting. See I.C. 20-26-14-6(c)(1). If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, I.C. 20-26-14-7(c), as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. Carlberg, 694 N.E.2d at 241.
5. The Case Review Panel reviews the IHSAA determination for arbitrariness or capriciousness. See Carlberg, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." Id. citing Dep't of Natural Resources v. Indiana Coal Council, Inc., 542 N.E.2d 1000, 1007 (Ind. 1989). Additionally, the Case Review Panel reviews whether an IHSAA decision is "not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence." See I.C. 20-26-14-7(c).
6. The IHSAA Review Committee's interpretation of the application of Rules 19-5, 19-4, and 20-1 is not a fair and logical application of the Rules. The IHSAA Review Committee states that "when there is evidence of undue influence, which is a violation of rule 20, and when there is evidence that the transfer was motivated primarily by athletic reasons, which is a violation of Rule 19-4, the student will be declared ineligible." However, the rules do not operate in this manner. Rather than requiring evidence of

undue influence and evidence that the transfer was primarily motivated by athletic reasons as stated by the IHSAA Review Committee, the rules require that if undue influence or primary motivation of athletics is shown, then the student will become ineligible for a period not to exceed 365 days. And, this requirement is governed by Rule 19-4 by itself and only Rule 19-4 was raised by IHSAA Assistant Commissioner Gardner.

7. The IHSAA Review Committee's application of Rule 20-1 is arbitrary and capricious and unsupported by substantial evidence. The IHSAA Review Committee bases its finding that Rule 20-1 was violated on comments allegedly made by Coach Judy about the superior ability of Boone Grove's basketball program as compared to Hebron's program for Petitioner's ability to have access to college scholarships for basketball to induce Petitioner's parents to move residences and transfer Petitioner. However, the evidence in the record supports only Coach Judy's general criticism of high school basketball versus AAU basketball's ability to prepare athletes for and gain athletes access to college basketball and does not substantiate his making such comments of priority between Boone Grove and Hebron to encourage or induce Petitioner's parents to move residences or transfer schools. Moreover, the evidence in the record indicates that the Petitioner's parents' decision to downsize was made either prior to or simultaneously to Petitioner's initial season being coached by Coach Judy.
8. The IHSAA Review Committee's interpretation and application of Rule 19-4 is arbitrary and capricious and unsupported by substantial evidence. Rule 19-4 states that "student athletes who transfer from one school to a new school for primarily athletic reasons . . . will become ineligible to participate in interschool athletics. A transfer is for primarily athletic reasons when the transfer is to "obtain . . . athletic advantage . . .", "obtain relief from a conflict . . .", "seek a team consistent with . . . athletic abilities", "obtain a means to nullify punitive action taken by the previous school", or for other similar reasons.

First, the Committee "understands that [Petitioner's] parents had apparently decided to essentially downsize to a more manageable residence, especially because of [Petitioner's] father's health and physical condition, and that there were discussions about the sale of

the [farm property] home in the fall of 2009.” The Committee determines that this was a “rational reason” for the move and that the “actual decision to move preceded the [Petitioner’s] statements about going to Boone Grove.” Therefore, holds the Committee, “the decision to sell the 800 West home and move into a new residence” was not primarily athletically motivated.

However, the Review Committee takes painstaking efforts to discuss away their own holding. The Committee holds that Petitioner’s move was primarily for athletic reasons, even though the move was made for a “rational reason” because (1) Petitioner told her Hebron coaches that Boone Grove was a superior basketball program; (2) the bona fide move was “extremely unusual” after Petitioner had told parents she was content with attending Hebron; and (3) Hebron offered to allow Petitioner to attend as a transfer student after the bona fide move but Petitioner chose to attend Boone Grove.

These Committee conclusions are not a fair or logical application or interpretation of Rule 19-4 and do not establish that the transfer was for primarily athletic reasons. None of these reasons, except for perhaps the discussion with the Hebron coaches, establishes the transfer was made to obtain athletic advantage, relief from a conflict, a team consistent with athletic abilities, avoidance of punitive action, or for a similar intent. Additionally, Petitioner’s discussion with the Hebron coaches was not substantial evidence, as demonstrated by the Committee’s application of the evidence. In Conclusion 6(c)(i), the Review Committee held that the transfer was for primarily athletic reasons because Petitioner “had already confided [in the Hebron coaches] . . . [that] she believed [Boone Grove was] a superior basketball program and better visibility to colleges.” In Conclusion 6(c)(ii), the Review Committee held that the transfer was for primarily athletic reasons because Petitioner’s parents ignored Petitioner’s desire to continue attendance at Hebron and that Petitioner was content with athletics at Hebron. Does Petitioner believe she is better suited athletically at Hebron or Boone Grove? The Committee resists this mutually exclusive question and holds that Petitioner believed both simultaneously. The Committee determines this in order to create a distinction between the purpose behind the Petitioner’s move and the purpose behind the Petitioner’s parent’s selection of the home in the Boone Grove district. This distinction is not a fair or

logical interpretation of Rule 19-4; the Rule does not allow the Committee to subdivide all the possible motives for a transfer, systematically add up whether evidence existed for a majority of the possible motives, then determine that the transfer was for primarily athletic reasons if the IHSAA establishes a majority of the possible motives. Rather, the Rule requires the Committee to determine if the transfer was primarily motivated, not partially motivated. But, even if it this were not true, the Committee's application of the evidence is not a fair or logical application because the Committee simultaneously holds that Petitioner wanted to transfer to Boone Grove for athletic reasons and that Petitioner did not want to transfer to Boone Grove because she was content at Hebron.

Finally, the Committee finds that the transfer was primarily motivated by athletics because Petitioner's parents did not choose to continue her at Hebron after the move. This is an arbitrary and capricious requirement: the burden is not on a Petitioner to establish reasons for remaining at a school after a bona fide move. A philosophy of Rule 19 is to "protect the opportunities of bona fide students" To require a Petitioner demonstrate why Petitioner would not remain as a transfer student contradicts the philosophy of Rule 19 and the intent behind Rule 19-5, which declares immediate eligibility for students who transfer with a corresponding change of residence.

ORDER

The IHSAA Review Committee order is hereby nullified by a vote of 7-0 and Petitioner hereby receives full athletic eligibility from the date of this order.

DATE: February 23, 2011

//signed
Matthew Tusing, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.